

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1437

AN ACT to amend the Indiana Code concerning corrections and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 11-10-13 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 13. Costs of Incarceration

Sec. 1. The department shall develop a methodology for determining the average daily cost of incarcerating an offender.

Sec. 2. The department shall determine the average daily cost of incarcerating an offender in:

- (1) the department; and**
- (2) each county jail.**

Sec. 3. The department shall provide each court with jurisdiction over felony and misdemeanor cases with a report enumerating the average daily costs of incarcerating an offender.

Sec. 4. (a) The department shall update the report described in section 3 of this chapter twice each calendar year. However, if the average daily cost of incarcerating an offender deviates less than one percent (1%) from the previous cost determination, the department is not required to update the report.

(b) The department shall update the report described in section 3 of this chapter, if necessary, after receiving the semiannual incarceration cost analysis from each county sheriff under IC 36-2-13-5.

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Sec. 5. The department may use the semiannual incarceration cost analysis of a county sheriff under IC 36-2-13-5 as the daily cost of incarcerating an offender in that county jail.

Sec. 6. (a) The department shall annually conduct or contract with a third party to annually conduct an actuarially based study of projected costs of incarceration.

(b) The study must:

(1) consider:

(A) the present and anticipated future costs of incarcerating the current inmate population;

(B) the effect of credit time;

(C) the effect of inmate mortality rates;

(D) the projected increase in costs of incarceration; and

(E) any other factor determined to be relevant by the department or the third party contractor; and

(2) provide an analysis of the projected costs of incarceration for each subsequent calendar year after the year the study is conducted until each inmate in the current inmate population is no longer serving the executed sentence for which the inmate is incarcerated in the department.

(c) Before July 1 of each year, the department shall provide the legislative council with the results of the study. The department shall provide the results in an electronic format under IC 5-14-6.

Sec. 7. The department may adopt rules under IC 4-22-2 to implement this chapter.

SECTION 2. IC 11-12-2-3, AS AMENDED BY P.L.224-2003, SECTION 123, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) A community corrections advisory board shall:

(1) formulate:

(A) the community corrections plan and the application for financial aid required by section 4 of this chapter; and

(B) the forensic diversion program plan under ~~IC 11-12-3.5-2~~ IC 11-12-3.7;

(2) observe and coordinate community corrections programs in the county;

(3) make an annual report to the county fiscal body, county executive, or, in a county having a consolidated city, the city-county council, containing an evaluation of the effectiveness of programs receiving financial aid under this chapter and recommendations for improvement, modification, or

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discontinuance of these programs;

(4) ensure that programs receiving financial aid under this chapter comply with the standards adopted by the department under section 5 of this chapter; and

(5) recommend to the county executive or, in a county having a consolidated city, to the city-county council, the approval or disapproval of contracts with units of local government or nongovernmental agencies that desire to participate in the community corrections plan.

Before recommending approval of a contract, the advisory board must determine that a program is capable of meeting the standards adopted by the department under section 5 of this chapter.

(b) A community corrections advisory board shall do the following:

(1) Adopt bylaws for the conduct of its own business.

(2) Hold a regular meeting at least one (1) time every three (3) months and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established at the first meeting of each year.

(3) Comply with the public meeting and notice requirements under IC 5-14-1.5.

(c) A community corrections advisory board may contain an office as designated by the county executive or, in a county having a consolidated city, by the city-county council.

(d) Notwithstanding subsection (a)(4), the standards applied to a court alcohol and drug program or a drug court that provides services to a forensic diversion program under IC 11-12-3.7 must be the standards established under IC 12-23-14 or IC 12-23-14.5.

SECTION 3. IC 11-12-3.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]:

Chapter 3.7. Forensic Diversion Program

Sec. 1. As used in this chapter, "addictive disorder" means a diagnosable chronic substance use disorder of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 2. As used in this chapter, "advisory board" means a:

(1) community corrections advisory board, if there is one in the county; or

(2) forensic diversion program advisory board, if there is not a community corrections advisory board in the county.

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Sec. 3. As used in this chapter, "drug dealing offense" means one (1) or more of the following offenses:

- (1) Dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1), unless the person received only minimal consideration as a result of the drug transaction.**
- (2) Dealing in a schedule I, II, III, IV, or V controlled substance (IC 35-48-4-2 through IC 35-48-4-4), unless the person received only minimal consideration as a result of the drug transaction.**
- (3) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10), unless the person received only minimal consideration as a result of the drug transaction.**

Sec. 4. As used in this chapter, "forensic diversion program" means a program designed to provide an adult:

- (1) who has a mental illness or addictive disorder; and**
- (2) who has been charged with a crime that is not a violent offense;**

an opportunity to receive community treatment and other services addressing mental health and addiction instead of or in addition to incarceration.

Sec. 5. As used in this chapter, "mental illness" means a psychiatric disorder that is of sufficient duration to meet diagnostic criteria within the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

Sec. 6. As used in this chapter, "violent offense" means one (1) or more of the following offenses:

- (1) Murder (IC 35-42-1-1).**
- (2) Attempted murder (IC 35-41-5-1).**
- (3) Voluntary manslaughter (IC 35-42-1-3).**
- (4) Involuntary manslaughter (IC 35-42-1-4).**
- (5) Reckless homicide (IC 35-42-1-5).**
- (6) Aggravated battery (IC 35-42-2-1.5).**
- (7) Battery (IC 35-42-2-1) as a Class A felony, Class B felony, or Class C felony.**
- (8) Kidnapping (IC 35-42-3-2).**
- (9) A sex crime listed in IC 35-42-4-1 through IC 35-42-4-8 that is a Class A felony, Class B felony, or Class C felony.**
- (10) Sexual misconduct with a minor (IC 35-42-4-9) as a Class A felony or Class B felony.**
- (11) Incest (IC 35-46-1-3).**

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- (12) Robbery as a Class A felony or a Class B felony (IC 35-42-5-1).
- (13) Burglary as a Class A felony or a Class B felony (IC 35-43-2-1).
- (14) Carjacking (IC 35-42-5-2).
- (15) Assisting a criminal as a Class C felony (IC 35-44-3-2).
- (16) Escape (IC 35-44-3-5) as a Class B felony or Class C felony.
- (17) Trafficking with an inmate as a Class C felony (IC 35-44-3-9).
- (18) Causing death when operating a motor vehicle (IC 9-30-5-5).
- (19) Criminal confinement (IC 35-42-3-3) as a Class B felony.
- (20) Arson (IC 35-43-1-1) as a Class A or Class B felony.
- (21) Possession, use, or manufacture of a weapon of mass destruction (IC 35-47-12-1).
- (22) Terroristic mischief (IC 35-47-12-3) as a Class B felony.
- (23) Hijacking or disrupting an aircraft (IC 35-47-6-1.6).
- (24) A violation of IC 35-47.5 (Controlled explosives) as a Class A or Class B felony.
- (25) A crime under the laws of another jurisdiction, including a military court, that is substantially similar to any of the offenses listed in this subdivision.
- (26) Any other crimes evidencing a propensity or history of violence.

Sec. 7. (a) An advisory board shall develop a forensic diversion plan to provide an adult who:

- (1) has a mental illness or addictive disorder; and**
- (2) has been charged with a crime that is not a violent crime; an opportunity, pre-conviction or post-conviction, to receive community treatment and other services addressing mental health and addictions instead of or in addition to incarceration.**

(b) The forensic diversion plan may include any combination of the following program components:

- (1) Pre-conviction diversion for adults with mental illness.**
- (2) Pre-conviction diversion for adults with addictive disorders.**
- (3) Post-conviction diversion for adults with mental illness.**
- (4) Post-conviction diversion for adults with addictive disorders.**

(c) In developing a plan, the advisory board must consider the

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ability of existing programs and resources within the community, including:

- (1) a drug court established under IC 12-23-14.5;
- (2) a court alcohol and drug program certified under IC 12-23-14-13;
- (3) treatment providers certified by the division of mental health and addiction under IC 12-23-1-6 or IC 12-21-2-3(a)(5); and
- (4) other public and private agencies.

(d) Development of a forensic diversion program plan under this chapter or IC 11-12-2-3 does not require implementation of a forensic diversion program.

(e) The advisory board may:

- (1) operate the program;
- (2) contract with existing public or private agencies to operate one (1) or more components of the program; or
- (3) take any combination of actions under subdivisions (1) or (2).

(f) Any treatment services provided under the forensic diversion program:

- (1) for addictions must be provided by an entity that is certified by the division of mental health and addiction under IC 12-23-1-6; or
- (2) for mental health must be provided by an entity that is:
 - (A) certified by the division of mental health and addiction under IC 12-21-2-3(a)(5);
 - (B) accredited by an accrediting body approved by the division of mental health and addiction; or
 - (C) licensed to provide mental health services under IC 25.

Sec. 8. (a) An individual may request treatment under this chapter or the court may order an evaluation of the individual to determine if the individual is an appropriate candidate for forensic diversion.

(b) A request for treatment or an order for an evaluation under this chapter tolls the running of the speedy trial time period until the court has made a determination of eligibility for the program under this section.

Sec. 9. (a) A court shall be provided with periodic progress reports on an individual who is ordered by the court to undergo treatment in a forensic diversion program.

(b) A participant may not be released from a forensic diversion

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program without a court order. The court must consider the recommendation of the forensic diversion program before ordering a participant's release.

Sec. 10. (a) A county that does not have a community corrections advisory board may form a forensic diversion advisory board.

(b) A forensic diversion advisory board formed under subsection (a) shall consist of the following:

- (1)** A judge exercising criminal jurisdiction in the county.
- (2)** The head of the county public defender office, if there is one in the county, or a criminal defense attorney who practices in the county if there is not a county public defender office in the county.
- (3)** The chief probation officer.
- (4)** The prosecuting attorney.
- (5)** The drug court judge or the designee of the drug court judge if there is a certified drug court in the county.
- (6)** The supervising judge of the court alcohol and drug services program or the designee of the supervising judge, if there is a certified court alcohol and drug services program in the county.
- (7)** An individual who is certified or licensed as a substance abuse professional.
- (8)** An individual who is certified or licensed as a mental health professional.
- (9)** An individual with expertise in substance abuse or mental health treatment.

Sec. 11. (a) A person is eligible to participate in a pre-conviction forensic diversion program only if the person meets the following criteria:

- (1)** The person has a mental illness or an addictive disorder.
- (2)** The person has been charged with an offense that is:
 - (A)** not a violent offense; and
 - (B)** a Class A, B, or C misdemeanor, or a Class D felony that may be reduced to a Class A misdemeanor in accordance with IC 35-50-2-7.
- (3)** The person does not have a conviction for a violent offense in the previous ten (10) years.

(b) Before an eligible person is permitted to participate in a pre-conviction forensic diversion program, the court shall advise the person of the following:

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(1) Before the individual is permitted to participate in the program, the individual will be required to enter a guilty plea to the offense with which the individual has been charged.

(2) The court will stay entry of the judgment of conviction during the time in which the individual is successfully participating in the program. If the individual stops successfully participating in the program, or does not successfully complete the program, the court will lift its stay, enter a judgment of conviction, and sentence the individual accordingly.

(3) If the individual participates in the program, the individual may be required to remain in the program for a period not to exceed three (3) years.

(4) During treatment the individual may be confined in an institution, be released for treatment in the community, receive supervised aftercare in the community, or may be required to receive a combination of these alternatives.

(5) If the individual successfully completes the forensic diversion program, the court will waive entry of the judgment of conviction and dismiss the charges.

(6) The court shall determine, after considering a report from the forensic diversion program, whether the individual is successfully participating in or has successfully completed the program.

(c) Before an eligible person may participate in a pre-conviction forensic diversion program, the person must plead guilty to the offense with which the person is charged.

(d) Before an eligible person may be admitted to a facility under the control of the division of mental health and addiction, the individual must be committed to the facility under IC 12-26.

(e) After the person has pleaded guilty, the court shall stay entry of judgment of conviction and place the person in the pre-conviction forensic diversion program for not more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

(f) If, after considering the report of the forensic diversion program, the court determines that the person has:

(1) failed to successfully participate in the forensic diversion program, or failed to successfully complete the program, the

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court shall lift its stay, enter judgment of conviction, and sentence the person accordingly; or

(2) successfully completed the forensic diversion program, the court shall waive entry of the judgment of conviction and dismiss the charges.

Sec. 12. (a) A person is eligible to participate in a post-conviction forensic diversion program only if the person meets the following criteria:

(1) The person has a mental illness or an addictive disorder.

(2) The person has been convicted of an offense that is:

(A) not a violent offense; and

(B) not a drug dealing offense.

(3) The person does not have a conviction for a violent offense in the previous ten (10) years.

(b) If the person has been convicted of an offense that may be suspended, the court shall suspend all or a portion of the person's sentence, place the person on probation for the suspended portion of the person's sentence, and require as a condition of probation that the person successfully participate in and successfully complete the post-conviction forensic diversion program.

(c) If the person has been convicted of an offense that is nonsuspendible, the court shall order the execution of the nonsuspendible sentence and stay execution of all or part of the nonsuspendible portion of the sentence pending the person's successful participation in and successful completion of the post-conviction forensic diversion program. The court shall treat the suspendible portion of a nonsuspendible sentence in accordance with subsection (b).

(d) The person may be required to participate in the post-conviction forensic diversion program for no more than:

(1) two (2) years, if the person has been charged with a misdemeanor; or

(2) three (3) years, if the person has been charged with a felony.

The time periods described in this section only limit the amount of time a person may spend in the forensic diversion program and do not limit the amount of time a person may be placed on probation.

(e) If, after considering the report of the forensic diversion program, the court determines that a person convicted of an offense that may be suspended has failed to successfully participate in the forensic diversion program, or has failed to successfully

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complete the program, the court shall revoke the person's probation and reimpose all or a portion of the person's suspended sentence.

(f) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense failed to successfully participate in the forensic diversion, or failed to successfully complete the program, the court shall lift its stay of execution of the nonsuspendible portion of the sentence and remand the person to the department of correction. However, if the person failed to successfully participate in the forensic diversion program, or failed to successfully complete the program while serving the suspendible portion of a nonsuspendible sentence, the court shall treat the suspendible portion of the sentence in accordance with subsection (e).

(g) If, after considering the report of the forensic diversion program, the court determines that a person convicted of a nonsuspendible offense has successfully completed the program, the court shall waive execution of the nonsuspendible portion of the person's sentence.

Sec. 13. (a) As used in this section, "account" means the forensic diversion program account established as an account within the state general fund by subsection (b).

(b) The forensic diversion program account is established within the state general fund to administer and carry out the purposes of this chapter. The department shall administer the account.

(c) The expenses of administering the account shall be paid from money in the account.

(d) The treasurer of state shall invest money in the account in the same manner as other public money may be invested.

(e) Money in the account at the end of the state fiscal year does not revert to the state general fund.

(f) The account consists of:

- (1) amounts appropriated by the general assembly; and
- (2) donations, grants, and money received from any other source.

(g) The department shall adopt guidelines governing the disbursement of funds to the advisory board to support the operation of the forensic diversion program.

(h) There is annually appropriated to the department from the account an amount sufficient to carry out the purposes of this

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chapter.

SECTION 4. IC 12-23-5-1, AS AMENDED BY P.L.224-2003, SECTION 125, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. ~~(a)~~ In a criminal proceeding for a misdemeanor or infraction in which:

- (1) the use or abuse of alcohol, drugs, or harmful substances is a contributing factor or a material element of the offense; or
- (2) the defendant's mental illness other than substance abuse, is a contributing factor;

the court may take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.

~~(b) For purposes of IC 11-12-3.5, in a criminal proceeding in which:~~

- ~~(1) the use or abuse of alcohol drugs, or harmful substances is a contributing factor or a material element of the offense; or~~
- ~~(2) the defendant's mental illness other than substance abuse, is a contributing factor;~~

~~the court shall take judicial notice of the fact that proper early intervention, medical, advisory, or rehabilitative treatment of the defendant is likely to decrease the defendant's tendency to engage in antisocial behavior.~~

SECTION 5. IC 12-23-14.5-14, AS ADDED BY P.L.168-2002, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 14. (a) A person is eligible to participate in a drug court only if:

- (1) the person meets all criteria established by the drug court;
- (2) the judge approves the admission of the person to the drug court; and
- (3) the offense for which the person is referred to drug court is not any of the following:

(A) A forcible felony (as defined in IC 35-41-1-11).

~~(B) A dealing offense under IC 35-48-4.~~

~~(C)~~ (B) Any offense that a local drug court committee agrees to exclude from participation.

The local drug court committee referred to in subdivision ~~(3)(C)~~ (3)(B) must include the drug court judge, the local prosecuting attorney, and a local criminal defense attorney.

(b) If a person is eligible to participate in a drug court, a person may be referred to the drug court as a result of any of the following:

- (1) The procedure described in section 15 of this chapter.

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(2) As a term of probation.

(3) In response to a violation of a condition of probation.

SECTION 6. IC 35-38-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. **(a)** When the defendant appears for sentencing, the court shall inform ~~him~~ **the defendant** of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in ~~his~~ **the defendant's** own behalf and, before pronouncing sentence, the court shall ask ~~him~~ **the defendant** whether ~~he~~ **the defendant** wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

(b) A court that sentences a person to a term of imprisonment shall include the total costs of incarceration in the sentencing order. The court may not consider Class I credit under IC 35-50-6-3 in the calculation of the total costs of incarceration.

SECTION 7. IC 35-40-5-5, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. A victim has the right to be heard at any proceeding involving ~~sentence or sentencing~~, a postconviction release decision, **or a pre-conviction release decision under a forensic diversion program.**

SECTION 8. IC 35-40-8-1, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. Upon request of a victim, a criminal court shall notify the victim of any probation **or forensic diversion** revocation disposition proceeding or proceeding in which the court is asked to terminate the probation **or forensic diversion** of a person who is convicted of a crime against the victim.

SECTION 9. IC 35-40-8-2, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Upon request of a victim, a criminal court shall notify the victim of a modification of the terms of probation **or a forensic diversion program** of a person convicted of a crime against the victim only if:

- (1) the modification will substantially affect the person's contact with or safety of the victim; or
- (2) the modification affects the person's restitution or confinement status.

SECTION 10. IC 35-41-1-26.8 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 26.8. "Total costs of incarceration" means the average daily cost of incarcerating an offender, as described in IC 11-10-13, multiplied by the number of days the offender is sentenced to a term of imprisonment.**

SECTION 11. IC 35-50-2-2, AS AMENDED BY HEA 1264, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a sentence for a felony, except as provided in this section or in section 2.1 of this chapter.

(b) With respect to the following crimes listed in this subsection, the court may suspend only that part of the sentence that is in excess of the minimum sentence, unless the court has approved placement of the offender in a forensic diversion program under ~~IC 11-12-3.5~~ **IC 11-12-3.7:**

- (1) The crime committed was a Class A or Class B felony and the person has a prior unrelated felony conviction.
- (2) The crime committed was a Class C felony and less than seven (7) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class C felony for which the person is being sentenced.
- (3) The crime committed was a Class D felony and less than three (3) years have elapsed between the date the person was discharged from probation, imprisonment, or parole, whichever is later, for a prior unrelated felony conviction and the date the person committed the Class D felony for which the person is being sentenced. However, the court may suspend the minimum sentence for the crime only if the court orders home detention under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum sentence specified for the crime under this chapter.
- (4) The felony committed was:
 - (A) murder (IC 35-42-1-1);
 - (B) battery (IC 35-42-2-1) with a deadly weapon or battery causing death;
 - (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
 - (D) kidnapping (IC 35-42-3-2);
 - (E) confinement (IC 35-42-3-3) with a deadly weapon;
 - (F) rape (IC 35-42-4-1) as a Class A felony;
 - (G) criminal deviate conduct (IC 35-42-4-2) as a Class A

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- felony;
- (H) child molesting (IC 35-42-4-3) as a Class A or Class B felony;
- (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or with a deadly weapon;
- (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily injury;
- (K) burglary (IC 35-43-2-1) resulting in serious bodily injury or with a deadly weapon;
- (L) resisting law enforcement (IC 35-44-3-3) with a deadly weapon;
- (M) escape (IC 35-44-3-5) with a deadly weapon;
- (N) rioting (IC 35-45-1-2) with a deadly weapon;
- (O) dealing in cocaine, a narcotic drug, or methamphetamine (IC 35-48-4-1) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
- (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (P) dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2) if the court finds the person possessed a firearm (as defined in IC 35-47-1-5) at the time of the offense, or the person delivered or intended to deliver to a person under eighteen (18) years of age at least three (3) years junior to the person and was on a school bus or within one thousand (1,000) feet of:
- (i) school property;
 - (ii) a public park;
 - (iii) a family housing complex; or
 - (iv) a youth program center;
- (Q) an offense under IC 9-30-5 (operating a vehicle while intoxicated) and the person who committed the offense has accumulated at least two (2) prior unrelated convictions under IC 9-30-5;
- (R) an offense under IC 9-30-5-5 (operating a vehicle while intoxicated causing death) if the person had:

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- (i) at least fifteen-hundredths (0.15) gram of alcohol per one hundred (100) milliliters of the person's blood, or at least fifteen-hundredths (0.15) gram of alcohol per two hundred ten (210) liters of the person's breath; or
- (ii) a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood; or

(S) aggravated battery (IC 35-42-2-1.5).

(c) Except as provided in subsection (e), whenever the court suspends a sentence for a felony, it shall place the person on probation under IC 35-38-2 for a fixed period to end not later than the date that the maximum sentence that may be imposed for the felony will expire.

(d) The minimum sentence for a person convicted of voluntary manslaughter may not be suspended unless the court finds at the sentencing hearing that the crime was not committed by means of a deadly weapon.

(e) Whenever the court suspends that part of an offender's (as defined in IC 5-2-12-4) sentence that is suspendible under subsection (b), the court shall place the offender on probation under IC 35-38-2 for not more than ten (10) years.

(f) An additional term of imprisonment imposed under IC 35-50-2-11 may not be suspended.

(g) A term of imprisonment imposed under IC 35-47-10-6 or IC 35-47-10-7 may not be suspended if the commission of the offense was knowing or intentional.

(h) A term of imprisonment imposed for an offense under IC 35-48-4-6(b)(1)(B) may not be suspended.

SECTION 12. IC 36-2-13-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) The sheriff shall:

- (1) arrest without process persons who commit an offense within ~~his~~ **the sheriff's** view, take them before a court of the county having jurisdiction, and detain them in custody until the cause of the arrest has been investigated;
- (2) suppress breaches of the peace, calling the power of the county to ~~his~~ **the sheriff's** aid if necessary;
- (3) pursue and jail felons;
- (4) execute all process directed to ~~him~~ **the sheriff** by legal authority;
- (5) serve all process directed to ~~him~~ **the sheriff** from a court or the county executive;
- (6) attend and preserve order in all courts of the county;
- (7) take care of the county jail and the prisoners there; ~~and~~

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(8) take photographs, fingerprints, and other identification data as ~~he~~ **the sheriff** shall prescribe of persons taken into custody for felonies or misdemeanors; **and**

(9) on or before January 31 and June 30 of each year, provide to the department of correction the average daily cost of incarcerating a prisoner in the county jail as determined under the methodology developed by the department of correction under IC 11-10-13.

(b) A person who:

- (1) refuses to be photographed;
- (2) refuses to be fingerprinted;
- (3) withholds information; or
- (4) gives false information;

as prescribed in subsection (a)(8), commits a Class C misdemeanor.

SECTION 13. [EFFECTIVE JULY 1, 2004] **(a) As used in this SECTION, "committee" refers to the forensic diversion study committee established by subsection (c).**

(b) As used in this SECTION, "forensic diversion program" means the program established under IC 11-12-3.7, as added by this act, and any similar program that treats persons charged with or convicted of offenses eligible for forensic diversion who have a mental illness or addictive disorder.

(c) There is established the forensic diversion study committee. The committee shall:

- (1) evaluate the effectiveness and appropriateness of forensic diversion programs within Indiana and in other jurisdictions; and**
- (2) review the adequacy of funding provided for forensic diversion programs.**

(d) The committee consists of fifteen (15) members appointed as follows:

- (1) Two (2) members of the senate, who may not be affiliated with the same political party, to be appointed by the president pro tempore of the senate.**
- (2) Two (2) members of the house of representatives, who may not be affiliated with the same political party, to be appointed by the speaker of the house of representatives.**
- (3) The chief justice of the supreme court or the chief justice's designee.**
- (4) The commissioner of the department of correction or the commissioner's designee.**

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(5) The director of the Indiana criminal justice institute or the director's designee.

(6) The executive director of the prosecuting attorneys council of Indiana or the executive director's designee.

(7) The executive director of the public defender of Indiana council or the executive director's designee.

(8) The secretary of family and social services, or the secretary's designee.

(9) One (1) person with experience in administering community corrections programs, appointed by the governor.

(10) One (1) person with experience in administering probation programs, appointed by the governor.

(11) One (1) person with experience in treating mental illness, appointed by the governor.

(12) One (1) person with experience in treating addictive disorders, appointed by the governor.

(13) Two (2) judges who exercise criminal jurisdiction, who may not be affiliated with the same political party, appointed by the governor.

(14) One (1) law enforcement officer with experience in programs that provide alternatives to incarceration for persons with mental illness or addictive disorders, appointed by the governor.

(e) The chairman of the legislative council shall appoint a legislative member of the committee to serve as chair of the committee. Whenever there is a new chairman of the legislative council, the new chairman of the legislative council may remove the chair of the committee and appoint another chair.

(f) If a legislative member of the committee ceases to be a member of the chamber from which the member was appointed, the member also ceases to be a member of the committee.

(g) A legislative member of the committee may be removed at any time by the authority who appointed the legislative member.

(h) If a vacancy exists on the committee, the authority who appointed the former member whose position is vacant shall appoint an individual to fill the vacancy.

(i) The committee shall submit a final report of its study to the legislative council before November 1, 2007.

(j) The Indiana criminal justice institute shall provide staff support to the committee.

(k) Each member of the committee is entitled to receive the

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same per diem, mileage, and travel allowances paid to individuals who serve as legislative and lay members, respectively, of interim study committees established by the legislative council.

(l) The affirmative votes of a majority of the members appointed to the committee are required for the committee to take action on any measure, including the final report.

(m) The committee:

(1) shall meet at the call of the chair; and

(2) may meet at any time before October 15, 2007.

(n) Except as otherwise specifically provided by this act, the committee shall operate under the rules of the legislative council. All funds necessary to carry out this SECTION shall be paid from appropriations to the legislative council and legislative services agency.

(o) This SECTION expires December 31, 2007.

SECTION 14. IC 11-12-3.5 IS REPEALED [EFFECTIVE JULY 1, 2004].

SECTION 15. IC 33-34-8-1, AS ADDED BY SEA 263-2004, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) The following fees and costs apply to cases in the small claims court:

(1) A township docket fee of five dollars (\$5) plus forty-five percent (45%) of the infraction or ordinance violation costs fee under IC 33-37-4-2.

(2) The bailiff's service of process by registered or certified mail fee of thirteen dollars (\$13) for each service.

(3) The cost for the personal service of process by the bailiff or other process server of thirteen dollars (\$13) for each service.

(4) Witness fees, if any, in the amount provided by IC 33-37-10-3 to be taxed and charged in the circuit court.

(5) A redocketing fee, if any, of five dollars (\$5).

(6) A document storage fee under IC 33-37-5-20.

(7) An automated record keeping fee under IC 33-37-5-21.

(8) A late fee, if any, under IC 33-37-5-22.

(9) A judicial administration fee under IC 33-37-5-21.2.

The docket fee and the cost for the initial service of process shall be paid at the institution of a case. The cost of service after the initial service shall be assessed and paid after service has been made. The cost of witness fees shall be paid before the witnesses are called.

(b) If the amount of the township docket fee computed under subsection (a)(1) is not equal to a whole number, the amount shall be rounded to the next highest whole number.

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SECTION 16. IC 33-37-4-1, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) For each action that results in a felony conviction under IC 35-50-2 or a misdemeanor conviction under IC 35-50-3, the clerk shall collect from the defendant a criminal costs fee of one hundred twenty dollars (\$120).

(b) In addition to the criminal costs fee collected under this section, the clerk shall collect from the defendant the following fees if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A marijuana eradication program fee (IC 33-37-5-7).
- (3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (4) A law enforcement continuing education program fee (IC 33-37-5-8(c)).
- (5) A drug abuse, prosecution, interdiction, and correction fee (IC 33-37-5-9).
- (6) An alcohol and drug countermeasures fee (IC 33-37-5-10).
- (7) A child abuse prevention fee (IC 33-37-5-12).
- (8) A domestic violence prevention and treatment fee (IC 33-37-5-13).
- (9) A highway work zone fee (IC 33-37-5-14).
- (10) A deferred prosecution fee (IC 33-37-5-17).
- (11) A document storage fee (IC 33-37-5-20).
- (12) An automated record keeping fee (IC 33-37-5-21).
- (13) A late payment fee (IC 33-37-5-22).
- (14) A sexual assault victims assistance fee (IC 33-37-5-23).
- (15) A judicial administration fee under IC 33-37-5-21.2.**

(c) Instead of the criminal costs fee prescribed by this section, the clerk shall collect a pretrial diversion program fee if an agreement between the prosecuting attorney and the accused person entered into under IC 33-39-1-8 requires payment of those fees by the accused person. The pretrial diversion program fee is:

- (1) an initial user's fee of fifty dollars (\$50); and
- (2) a monthly user's fee of ten dollars (\$10) for each month that the person remains in the pretrial diversion program.

(d) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees, not later than thirty (30) days after the fees are collected:

- (1) The pretrial diversion fee.

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- (2) The marijuana eradication program fee.
- (3) The alcohol and drug services program user fee.
- (4) The law enforcement continuing education program fee.

The auditor or fiscal officer shall deposit fees transferred under this subsection in the appropriate user fee fund established under IC 33-37-8.

(e) Unless otherwise directed by a court, if a clerk collects only part of a criminal costs fee from a defendant under this section, the clerk shall distribute the partial payment of the criminal costs fee as follows:

- (1) The clerk shall apply the partial payment to general court costs.
- (2) If there is money remaining after the partial payment is applied to general court costs under subdivision (1), the clerk shall distribute the remainder of the partial payment for deposit in the appropriate county user fee fund.
- (3) If there is money remaining after distribution under subdivision (2), the clerk shall distribute the remainder of the partial payment for deposit in the state user fee fund.
- (4) If there is money remaining after distribution under subdivision (3), the clerk shall distribute the remainder of the partial payment to any other applicable user fee fund.
- (5) If there is money remaining after distribution under subdivision (4), the clerk shall apply the remainder of the partial payment to any outstanding fines owed by the defendant.

SECTION 17. IC 33-37-4-2, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Except as provided in subsections (d) and (e), for each action that results in a judgment:

- (1) for a violation constituting an infraction; or
- (2) for a violation of an ordinance of a municipal corporation (as defined in IC 36-1-2-10);

the clerk shall collect from the defendant an infraction or ordinance violation costs fee of seventy dollars (\$70).

(b) In addition to the infraction or ordinance violation costs fee collected under this section, the clerk shall collect from the defendant the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) An alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (3) A law enforcement continuing education program fee

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IC 33-37-5-8(c)).

(4) An alcohol and drug countermeasures fee (IC 33-37-5-10).

(5) A highway work zone fee (IC 33-37-5-14).

(6) A deferred prosecution fee (IC 33-37-5-17).

(7) A jury fee (IC 33-19-6-17). (IC 33-37-5-19).

(8) A document storage fee (IC 33-37-5-20).

(9) An automated record keeping fee (IC 33-37-5-21).

(10) A late payment fee (IC 33-37-5-22).

(11) A judicial administration fee under IC 33-37-5-21.2.

(c) The clerk shall transfer to the county auditor or fiscal officer of the municipal corporation the following fees, not later than thirty (30) days after the fees are collected:

(1) The alcohol and drug services program user fee (IC 33-37-5-8(b)).

(2) The law enforcement continuing education program fee (IC 33-37-5-8(c)).

(3) The deferral program fee (subsection e).

The auditor or fiscal officer shall deposit the fees in the user fee fund established under IC 33-37-8.

(d) The defendant is not liable for any ordinance violation costs fee in an action if all the following apply:

(1) The defendant was charged with an ordinance violation subject to IC 33-36.

(2) The defendant denied the violation under IC 33-36-3.

(3) Proceedings in court against the defendant were initiated under IC 34-28-5 (or IC 34-4-32 before its repeal).

(4) The defendant was tried and the court entered judgment for the defendant for the violation.

(e) Instead of the infraction or ordinance violation costs fee prescribed by subsection (a), the clerk shall collect a deferral program fee if an agreement between a prosecuting attorney or an attorney for a municipal corporation and the person charged with a violation entered into under IC 34-28-5-1 (or IC 34-4-32-1 before its repeal) requires payment of those fees by the person charged with the violation. The deferral program fee is:

(1) an initial user's fee not to exceed fifty-two dollars (\$52); and

(2) a monthly user's fee not to exceed ten dollars (\$10) for each month the person remains in the deferral program.

(f) The fees prescribed by this section are costs for purposes of IC 34-28-5-4 and may be collected from a defendant against whom judgment is entered. Any penalty assessed is in addition to costs.

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SECTION 18. IC 33-37-4-3, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) The clerk shall collect a juvenile costs fee of one hundred twenty dollars (\$120) for each action filed under any of the following

- (1) IC 31-34 (children in need of services).
- (2) IC 31-37 (delinquent children).
- (3) IC 31-14 (paternity).

(b) In addition to the juvenile costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A marijuana eradication program fee (IC 33-37-5-7).
- (3) An alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (4) A law enforcement continuing education program fee (IC 33-37-5-8(c)).
- (5) An alcohol and drug countermeasures fee (IC 33-37-5-10).
- (6) A document storage fee (IC 33-37-5-20).
- (7) An automated record keeping fee (IC 33-37-5-21).
- (8) A late payment fee (IC 33-37-5-22).

(9) A judicial administration fee under IC 33-37-5-21.2.

(c) The clerk shall transfer to the county auditor or city or town fiscal officer the following fees not later than thirty (30) days after they are collected:

- (1) The marijuana eradication program fee (IC 33-37-5-7).
- (2) The alcohol and drug services program user fee (IC 33-37-5-8(b)).
- (3) The law enforcement continuing education program fee (IC 33-37-5-8(c)).

The auditor or fiscal officer shall deposit the fees in the appropriate user fee fund established under IC 33-37-8.

SECTION 19. IC 33-37-4-4, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) The clerk shall collect a civil costs fee of one hundred dollars (\$100) from a party filing a civil action. This subsection does not apply to the following civil actions:

- (1) Proceedings to enforce a statute defining an infraction under IC 34-28-5 (or IC 34-4-32 before its repeal).
- (2) Proceedings to enforce an ordinance under IC 34-28-5 (or

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IC 34-4-32 before its repeal).

(3) Proceedings in juvenile court under IC 31-34 or IC 31-37.

(4) Proceedings in paternity under IC 31-14.

(5) Proceedings in small claims court under IC 33-34.

(6) Proceedings in actions described in section 7 of this chapter.

(b) In addition to the civil costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).

(2) A support and maintenance fee (IC 33-37-5-6).

(3) A document storage fee (IC 33-37-5-20).

(4) An automated record keeping fee (IC 33-37-5-21).

(5) A judicial administration fee under IC 33-37-5-21.2.

SECTION 20. IC 33-37-4-5, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) For each small claims action the clerk shall collect from the party filing the action a small claims costs fee of thirty-five dollars (\$35). However, a clerk may not collect a small claims costs fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

(1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).

(2) A document storage fee (IC 33-37-5-20).

(3) An automated record keeping fee (IC 33-37-5-21).

(4) A judicial administration fee under IC 33-37-5-21.2.

(c) This section expires July 1, 2005.

SECTION 21. IC 33-37-4-6, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) For each small claims action, the clerk shall collect from the party filing the action both of the following fees:

(1) A small claims costs fee of thirty-five dollars (\$35).

(2) A small claims service fee of five dollars (\$5) for each defendant named or added in the small claims action.

However, a clerk may not collect a small claims costs fee or small claims service fee for a small claims action filed by or on behalf of the attorney general.

(b) In addition to a small claims costs fee and small claims service

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fee collected under this section, the clerk shall collect the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A document storage fee (IC 33-37-5-20).
- (3) An automated record keeping fee (IC 33-37-5-21).
- (4) A judicial administration fee under IC 33-37-5-21.2.**

(c) This section applies after June 30, 2005.

SECTION 22. IC 33-37-4-7, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Except as provided under subsection (c), the clerk shall collect from the party filing the action a probate costs fee of one hundred twenty dollars (\$120) for each action filed under any of the following:

- (1) IC 6-4.1-5 (determination of inheritance tax).
- (2) IC 29 (probate).
- (3) IC 30 (trusts and fiduciaries).

(b) In addition to the probate costs fee collected under subsection (a), the clerk shall collect from the party filing the action the following fees, if they are required under IC 33-37-5:

- (1) A document fee (IC 33-37-5-1, IC 33-37-5-3, or IC 33-37-5-4).
- (2) A document storage fee (IC 33-37-5-20).
- (3) An automated record keeping fee (IC 33-37-5-21).
- (4) A judicial administration fee under IC 33-37-5-21.2.**

(c) A clerk may not collect a court costs fee for the filing of the following exempted actions:

- (1) Petition to open a safety deposit box.
- (2) Filing an inheritance tax return, unless proceedings other than the court's approval of the return become necessary.
- (3) Offering a will for probate under IC 29-1-7, unless proceedings other than admitting the will to probate become necessary.

SECTION 23. IC 33-37-5-21.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 21.2. (a) This subsection does not apply to the following:**

- (1) A criminal proceeding.**
- (2) A proceeding for an infraction violation.**
- (3) A proceeding for an ordinance violation.**

In each action filed in a court described in IC 33-37-1-1, the clerk

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shall collect a judicial administration fee of, in the period beginning July 1, 2004, and ending June 30, 2005, one dollar (\$1) and after June 30, 2005, two dollars (\$2).

(b) In each action in which a person is:

- (1) convicted of an offense;
- (2) required to pay a pretrial diversion fee;
- (3) found to have violated an infraction; or
- (4) found to have violated an ordinance;

the clerk shall collect a judicial administration fee of, in the period beginning July 1, 2004, and ending June 30, 2005, one dollar (\$1) and after June 30, 2005, two dollars (\$2).

SECTION 24. IC 33-37-7-1, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) The clerk of a circuit court shall semiannually distribute to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).
- (5) IC 33-37-4-5(a) (small claims costs fees).
- (6) IC 33-37-4-7(a) (probate costs fees).
- (7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state user fee fund established by IC 33-37-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.

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(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under, IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance fund established by IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS) collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for

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cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial administration fee collected under IC 33-37-5-21.2.

~~(h)~~ (i) This section expires July 1, 2005.

SECTION 25. IC 33-37-7-2, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The clerk of a circuit court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund seventy percent (70%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-3(a) (juvenile costs fees).
- (4) IC 33-37-4-4(a) (civil costs fees).
- (5) IC 33-37-4-6(a)(1) (small claims costs fees).
- (6) IC 33-37-4-7(a) (probate costs fees).
- (7) IC 33-37-5-17 (deferred prosecution fees).

(b) The clerk of a circuit court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9-2 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) Fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7).
- (4) One hundred percent (100%) of the domestic violence prevention and treatment fees collected under IC 33-37-4-1(b)(8).
- (5) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).

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(6) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.

(7) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(c) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and correction fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(d) The clerk of a circuit court shall distribute monthly to the county auditor fifty percent (50%) of the child abuse prevention fees collected under IC 33-37-4-1(b)(7). The county auditor shall deposit fees distributed by a clerk under this subsection into the county child advocacy fund established under IC 12-17-17.

(e) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The county auditor shall deposit fees distributed by a clerk under this subsection as follows:

(1) If directed to do so by an ordinance adopted by the county fiscal body, the county auditor shall deposit forty percent (40%) of the fees in the clerk's record perpetuation fund established under IC 33-37-5-2 and sixty percent (60%) of the fees in the county general fund.

(2) If the county fiscal body has not adopted an ordinance described in subdivision (1), the county auditor shall deposit all the fees in the county general fund.

(f) The clerk of the circuit court shall distribute semiannually to the auditor of state for deposit in the sexual assault victims assistance fund established by IC 16-19-13-6 one hundred percent (100%) of the sexual assault victims assistance fees collected under IC 33-37-5-23.

(g) The clerk of a circuit court shall distribute monthly to the county auditor the following:

(1) One hundred percent (100%) of the support and maintenance fees for cases designated as non-Title IV-D child support cases in the Indiana support enforcement tracking system (ISETS)

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collected under IC 33-37-5-6.

(2) The percentage share of the support and maintenance fees for cases designated as IV-D child support cases in ISETS collected under IC 33-37-5-6 that is reimbursable to the county at the federal financial participation rate.

The county clerk shall distribute monthly to the office of the secretary of family and social services the percentage share of the support and maintenance fees for cases designated as Title IV-D child support cases in ISETS collected under IC 33-37-5-6 that is not reimbursable to the county at the applicable federal financial participation rate.

(h) The clerk of a circuit court shall distribute monthly to the county auditor one hundred percent (100%) of the small claims service fee under IC 33-37-4-6(a)(2) for deposit in the county general fund.

(i) The clerk of a circuit court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial administration fee collected under IC 33-37-5-21.2.

†(j) This section applies after June 30, 2005.

SECTION 26. IC 33-37-7-7, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) The clerk of a city or town court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-5 (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(b) The city or town fiscal officer shall distribute monthly to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-5 (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).

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- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-5 (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(d) The clerk of a city or town court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established by IC 33-37-9 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (4) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (5) One hundred percent (100%) of the automated record keeping fee (IC 33-37-5-21).

(e) The clerk of a city or town court shall distribute monthly to the county auditor the following:

- (1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-37-4-1(b)(5).
- (2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(f) The clerk of a city or town court shall monthly distribute to the city or town fiscal officer (as defined in IC 36-1-2-7) one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit fees distributed by a clerk under this subsection in the city or town general fund.

(g) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial administration fee collected under IC 33-37-5-21.2.

~~(g)~~ **(h)** This section expires July 1, 2005.

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SECTION 27. IC 33-37-7-8, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) The clerk of a city or town court shall distribute semiannually to the auditor of state as the state share for deposit in the state general fund fifty-five percent (55%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(b) The city or town fiscal officer shall distribute monthly to the county auditor as the county share twenty percent (20%) of the amount of fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(c) The city or town fiscal officer shall retain twenty-five percent (25%) as the city or town share of the fees collected under the following:

- (1) IC 33-37-4-1(a) (criminal costs fees).
- (2) IC 33-37-4-2(a) (infraction or ordinance violation costs fees).
- (3) IC 33-37-4-4(a) (civil costs fees).
- (4) IC 33-37-4-6(a)(1) (small claims costs fees).
- (5) IC 33-37-5-17 (deferred prosecution fees).

(d) The clerk of a city or town court shall distribute semiannually to the auditor of state for deposit in the state user fee fund established in IC 33-37-9 the following:

- (1) Twenty-five percent (25%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-37-4-1(b)(5).
- (2) Twenty-five percent (25%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).
- (3) One hundred percent (100%) of the highway work zone fees collected under IC 33-37-4-1(b)(9) and IC 33-37-4-2(b)(5).
- (4) One hundred percent (100%) of the safe schools fee collected under IC 33-37-5-18.
- (5) One hundred percent (100%) of the automated record keeping

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fee (IC 33-37-5-21).

(e) The clerk of a city or town court shall distribute monthly to the county auditor the following:

(1) Seventy-five percent (75%) of the drug abuse, prosecution, interdiction, and corrections fees collected under IC 33-37-4-1(b)(5).

(2) Seventy-five percent (75%) of the alcohol and drug countermeasures fees collected under IC 33-37-4-1(b)(6), IC 33-37-4-2(b)(4), and IC 33-37-4-3(b)(5).

The county auditor shall deposit fees distributed by a clerk under this subsection into the county drug free community fund established under IC 5-2-11.

(f) The clerk of a city or town court shall distribute monthly to the city or town fiscal officer (as defined in IC 36-1-2-7) one hundred percent (100%) of the late payment fees collected under IC 33-37-5-22. The city or town fiscal officer (as defined in IC 36-1-2-7) shall deposit fees distributed by a clerk under this subsection in the city or town general fund.

(g) The clerk of a city or town court shall semiannually distribute to the auditor of state for deposit in the state general fund one hundred percent (100%) of the judicial administration fee collected under IC 33-37-5-21.2.

~~(g)~~ **(h)** This section applies after June 30, 2005.

SECTION 28. IC 33-37-7-9, AS ADDED BY SEA 263-2004, SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) On June 30 and on December 31 of each year, the auditor of state shall transfer to the treasurer of state six million seven hundred four thousand two hundred fifty-seven dollars (\$6,704,257) for distribution under subsection (b).

(b) On June 30 and on December 31 of each year the treasurer of state shall deposit into:

(1) the family violence and victim assistance fund established by IC 12-18-5-2 an amount equal to eleven and eight-hundredths percent (11.08%);

(2) the Indiana judges' retirement fund established by IC 33-38-6-12 an amount equal to twenty-five and twenty-one hundredths percent (25.21%);

(3) the law enforcement academy building fund established by IC 5-2-1-13 an amount equal to three and fifty-two hundredths percent (3.52%);

(4) the law enforcement training fund established by IC 5-2-1-13

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an amount equal to fourteen and nineteen-hundredths percent (14.19%);

(5) the violent crime victims compensation fund established by IC 5-2-6.1-40 an amount equal to sixteen and fifty-hundredths percent (16.50%);

(6) the motor vehicle highway account an amount equal to twenty-six and ninety-five hundredths percent (26.95%);

(7) the fish and wildlife fund established by IC 14-22-3-2 an amount equal to thirty-two hundredths of one percent (0.32%); and

(8) the Indiana judicial center drug and alcohol programs fund established by IC 12-23-14-17 for the administration, certification, and support of alcohol and drug services programs under IC 12-23-14 an amount equal to two and twenty-three hundredths percent (2.23%);

of the amount transferred by the auditor of state under subsection (a).

(c) On June 30 and on December 31 of each year the auditor of state shall transfer to the treasurer of state **for deposit into the public defense fund established under IC 33-40-6-1:**

(1) **after June 30, 2004, and before July 1, 2005, one million two seven hundred thousand dollars (~~\$1,200,000~~) (\$1,700,000) for deposit into the public defense fund established under IC 33-40-6-1; and**

(2) **after June 30, 2005, two million two hundred thousand dollars (\$2,200,000).**

SECTION 29. IC 33-40-6-6, AS ADDED BY SEA 263-2004, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) ~~If the public defense fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all county reimbursement for net expenditures in noncapital cases that is certified by the division of state court administration in any quarter, the public defender commission shall suspend payment of reimbursement to counties in noncapital cases until the next semiannual deposit in the public defense fund. At the end of the suspension period, the division of state court administration shall certify all suspended reimbursement.~~

(b) ~~If the public defense fund would be reduced below two hundred fifty thousand dollars (\$250,000) by payment in full of all suspended reimbursement in noncapital cases, the amount certified by the division of state court administration for each county entitled to reimbursement shall be prorated. The commission shall give priority to certified~~

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claims for reimbursement in capital cases. If the balance in the public defense fund is not adequate to fully reimburse all certified claims in noncapital cases, the commission shall prorate reimbursement of certified claims in noncapital cases.

SECTION 30. IC 11-8-1-5.6, AS AMENDED BY P.L.291-2001, SECTION 223, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5.6. "Community transition program commencement date" means the following:

- (1) **Not earlier than** sixty (60) days **and not later than thirty (30) days** before an offender's expected release date, if the most serious offense for which the person is committed is a Class D felony.
- (2) **Not earlier than** ninety (90) days **and not later than thirty (30) days** before an offender's expected release date, if the most serious offense for which the person is committed is a Class C felony and subdivision (3) does not apply.
- (3) **Not earlier than** one hundred twenty (120) days **and not later than thirty (30) days** before an offender's expected release date, if:
 - (A) the most serious offense for which the person is committed is a Class C felony;
 - (B) all of the offenses for which the person was concurrently or consecutively sentenced are offenses under IC 16-42-19 or IC 35-48-4; and
 - (C) none of the offenses for which the person was concurrently or consecutively sentenced are listed in IC 35-50-2-2(b)(4).
- (4) **Not earlier than** one hundred twenty (120) days **and not later than thirty (30) days** before an offender's expected release date, if the most serious offense for which the person is committed is a Class A or Class B felony and subdivision (5) does not apply.
- (5) **Not earlier than** one hundred eighty (180) days **and not later than thirty (30) days** before an offender's expected release date, if:
 - (A) the most serious offense for which the person is committed is a Class A or Class B felony;
 - (B) all of the offenses for which the person was concurrently or consecutively sentenced are offenses under IC 16-42-19 or IC 35-48-4; and
 - (C) none of the offenses for which the person was concurrently or consecutively sentenced are listed in IC 35-50-2-2(b)(4).

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SECTION 31. IC 11-10-11.5-1, AS AMENDED BY P.L.90-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies to a person:

- (1) who is committed to the department under IC 35-50 for one (1) or more felonies; ~~other than murder~~; and
- (2) against whom a court imposed a sentence of at least two (2) years.

SECTION 32. IC 11-10-11.5-2, AS AMENDED BY P.L.90-2000, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. **(a)** Not earlier than sixty (60) days and not later than forty-five (45) days before an offender's community transition program commencement date, the department shall give written notice of the offender's eligibility for a community transition program to each court that sentenced the offender for a period of imprisonment that the offender is still actively serving. The notice must include the following information:

- (1) The person's name.
- (2) A description of the offenses for which the person was committed to the department.
- (3) The person's expected release date.
- (4) The person's community transition program commencement date **designated by the department.**
- (5) The person's current security and credit time classifications.
- (6) A report summarizing the person's conduct while committed to the department.
- (7) Any other information that the department determines would assist the sentencing court in determining whether to issue an order under IC 35-38-1-24 or IC 35-38-1-25.

(b) ~~However,~~ If the offender's expected release date changes as the result of the ~~gain or~~ loss of credit time after notice is sent to each court under this section, the offender may become ineligible for a community transition program.

(c) If the offender's expected release date changes as the result of the gain of credit time after notice is sent to each court under this section, the offender may be assigned to a community transition program if the department determines that:

- (1) a sufficient amount of time exists to allow a court under IC 35-38-1-24 or IC 35-38-1-25 to consider a written statement described in section 4.5 of this chapter; and**
- (2) an offender will have at least thirty (30) days remaining on the offender's sentence after the court's consideration of a**

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written statement under subdivision (1), calculated as follows:

(A) Beginning on the date the department will assign the offender to a minimum security classification and place the offender in a community transition program.

(B) Ending with the recalculated expected release date.

(d) The department shall notify each court whenever the department finds that an offender is ineligible for the program because of a change in the person's credit time.

SECTION 33. IC 11-10-11.5-4.5, AS ADDED BY P.L.90-2000, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4.5. (a) Before the department may assign an offender to a minimum security classification and place the offender in a community transition program, the department shall notify:

(1) the offender and any victim of the offender's crime of the right to submit a written statement regarding the offender's assignment to the community transition program; and

(2) the offender of the right to submit a written statement objecting to the offender's placement in a community transition program;

to each court that sentenced the offender to a period of imprisonment that the offender is actively serving. If the name or address of a victim of the offender's crime changes after the offender is sentenced for the offense, and the offender's sentence may result in the offender's assignment to the community transition program, the victim is responsible for notifying the department of the name or address change.

(b) An offender or a victim of the offender's crime who wishes to submit a written statement under ~~this section~~ **subsection (a)(1)** must submit the statement to each court **and the department** not later than ten (10) working days after receiving notice from the department under subsection (a).

(c) An offender's written statement objecting to the offender's placement in a community transition program under subsection (a)(2) must be submitted to each court and the department:

(1) not later than ten (10) working days after receiving notice from the department under subsection (a); or

(2) before the offender is transported under section 7 of this chapter;

whichever occurs first.

SECTION 34. IC 11-10-11.5-5, AS AMENDED BY P.L.90-2000, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 5. (a) This section applies to a person if the most

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serious offense for which the person is committed is a Class C or Class D felony.

(b) Unless the department has received:

- (1) an order under IC 35-38-1-24; or
- (2) a warrant order of detainer seeking the transfer of the person to a county or another jurisdiction;

the department shall assign a person to a minimum security classification and place the person in a community transition program beginning with the ~~person's~~ community transition program commencement date **designated by the department** until the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term.

SECTION 35. IC 11-10-11.5-7, AS ADDED BY P.L.273-1999, SECTION 208, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. Not later than ~~the first seven (7)~~ regular business ~~day days~~ after a person is assigned to a community transition program under this chapter, the department shall:

- (1) comply with the procedures in IC 11-10-12-1(a)(1) and IC 11-10-12-1(a)(2); and
- (2) transport the person to:
 - (A) the sheriff of the county where the person's case originated; ~~or to~~
 - (B) any other person ordered by the sentencing court; ~~or~~
 - (C) **a person or an entity designated by the supervising authority of the community transition program to which the person is assigned.**

The department may, upon request of the person, issue the work clothing described in IC 11-10-12-1(b).

SECTION 36. IC 11-10-11.5-8, AS AMENDED BY P.L.90-2000, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) The person ~~or entity~~ receiving the offender under section 7 of this chapter shall transfer the offender to the intake person for the community transition program.

(b) As soon as is practicable after receiving the offender, the community transition program shall

- (1) ~~provide~~ provide the offender with a reasonable opportunity to review the rules and conditions applicable to the offender's assignment in the program. ~~and~~
- (2) ~~obtain the offender's written agreement to abide by all of the rules and conditions of the program.~~

(c) ~~☆~~ **The department may take disciplinary action under**

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IC 11-11-5 against an offender who:

- (1) has been assigned to a minimum security classification and placed in a community transition program; and**
- (2) refuses to participate in the community transition program.** shall provide an offender with a written document stating that any offender who is assigned to a community transition program participates in the program on a voluntary basis. An offender must agree in writing that the offender's participation in the program is voluntary, before the offender may be allowed to participate in the program.

SECTION 37. IC 11-10-11.5-11.5, AS ADDED BY P.L.90-2000, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11.5. (a) **Except as provided in section 4.5 of this chapter**, an offender is **not** entitled to refuse to be placed into a community transition program. However, if the offender ~~does not~~ refuse the placement and agrees in writing to voluntarily participate, as required by section 8 of this chapter, the offender is considered to participate in the community transition program on a voluntary basis. **may request that an assignment to a community transition program be delayed if the offender will be enrolled in department programming on the community transition program commencement date designated by the department.**

(b) The community transition program, **following a hearing and** upon a finding of probable cause that the offender has failed to comply with a rule or condition under section 11 of this chapter, ~~shall cause the department to:~~ **may:**

- (1) request a court to issue a warrant ordering the department to immediately:**
 - (A) return the offender to the department; and or**
 - (2) (B) reassign the offender to a program or facility administered by the department; or**
- (2) take disciplinary action against an offender who violates rules of conduct. Disciplinary action under this subdivision may include the loss of earned credit time under IC 35-50-6-5.**

(c) An offender who is returned to the department under subsection (b) is not eligible for assignment to another community transition program for the duration of the sentence or sentences the offender is actively serving.

SECTION 38. IC 11-11-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. **(a) A person may be prohibited from visiting a confined person, or the visit may be**

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restricted to an extent greater than allowed under section 8 of this chapter, if the department has reasonable grounds to believe that the visit would threaten the security of the facility or program or the safety of individuals.

(b) The department may restrict any person less than eighteen (18) years of age from visiting an offender, if:

(1) the offender has been:

(A) convicted of a sex offense under IC 35-42-4; or

(B) adjudicated delinquent as a result of an act that would be considered a sex offense under IC 35-42-4 if committed by an adult; and

(2) the victim of the sex offense was less than eighteen (18) years of age at the time of the offense.

(c) If the department prohibits or restricts visitation between a confined person and another person under this section, it shall notify the confined person of that prohibition or restriction. The notice must be in writing and include the reason for the action, the name of the person who made the decision, and the fact that the action may be challenged through the grievance procedure.

(d) The department shall establish written guidelines for implementing this section.

SECTION 39. IC 35-38-1-25, AS AMENDED BY P.L.90-2000, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 25. (a) This section applies to a person if the most serious offense for which the person is committed is **murder**, a Class A **felony**, or a Class B felony.

(b) A sentencing court may sentence a person or modify the sentence of a person to assign the person to a community transition program for any period that begins after the person's community transition program commencement date (as defined in IC 11-8-1-5.6) and ends when the person completes the person's fixed term of imprisonment, less the credit time the person has earned with respect to the term, if the court makes specific findings of fact that support a determination that it is in the best interests of justice to make the assignment. The order may include any other condition that the court could impose if the court had placed the person on probation under IC 35-38-2 or in a community corrections program under IC 35-38-2.6.

(c) The court may make a determination under this section without a hearing. The court shall consider any written statement presented to the court by a victim of the offender's crime or by an offender under IC 11-10-11.5-4.5. The court in its discretion may consider statements

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submitted by a victim after the time allowed for the submission of statements under IC 11-10-11.5-4.5.

(d) The court shall make written findings for a determination under this section, whether or not a hearing was held.

(e) Not later than five (5) days after making a determination under this section, the court shall send a copy of the order to the:

- (1) prosecuting attorney where the person's case originated; and
- (2) department of correction.

SECTION 40. IC 5-2-1-9, AS AMENDED BY P.L.45-2001, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) The board shall adopt in accordance with IC 4-22-2 all necessary rules to carry out the provisions of this chapter. Such rules, which shall be adopted only after necessary and proper investigation and inquiry by the board, shall include the establishment of the following:

- (1) Minimum standards of physical, educational, mental, and moral fitness which shall govern the acceptance of any person for training by any law enforcement training school or academy meeting or exceeding the minimum standards established pursuant to this chapter.
- (2) Minimum standards for law enforcement training schools administered by towns, cities, counties, the northwest Indiana law enforcement training center, agencies, or departments of the state.
- (3) Minimum standards for courses of study, attendance requirements, equipment, and facilities for approved town, city, county, and state law enforcement officer, police reserve officer, and conservation reserve officer training schools.
- (4) Minimum standards for a course of study on cultural diversity awareness that must be required for each person accepted for training at a law enforcement training school or academy.
- (5) Minimum qualifications for instructors at approved law enforcement training schools.
- (6) Minimum basic training requirements which law enforcement officers appointed to probationary terms shall complete before being eligible for continued or permanent employment.
- (7) Minimum basic training requirements which law enforcement officers not appointed for probationary terms but appointed on other than a permanent basis shall complete in order to be eligible for continued employment or permanent appointment.
- (8) Minimum basic training requirements which law enforcement officers appointed on a permanent basis shall complete in order

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to be eligible for continued employment.

(9) Minimum basic training requirements for each person accepted for training at a law enforcement training school or academy that include six (6) hours of training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the law enforcement training board.

(b) Except as provided in subsection (l), a law enforcement officer appointed after July 5, 1972, and before July 1, 1993, may not enforce the laws or ordinances of the state or any political subdivision unless the officer has, within one (1) year from the date of appointment, successfully completed the minimum basic training requirements established under this chapter by the board. If a person fails to successfully complete the basic training requirements within one (1) year from the date of employment, the officer may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until the officer has successfully completed the training requirements. This subsection does not apply to any law enforcement officer appointed before July 6, 1972, or after June 30, 1993.

(c) Military leave or other authorized leave of absence from law enforcement duty during the first year of employment after July 6, 1972, shall toll the running of the first year, which in such cases shall be calculated by the aggregate of the time before and after the leave, for the purposes of this chapter.

(d) Except as provided in subsections (e) and (l), a law enforcement officer appointed to a law enforcement department or agency after June 30, 1993, may not:

- (1) make an arrest;
- (2) conduct a search or a seizure of a person or property; or
- (3) carry a firearm;

unless the law enforcement officer successfully completes, at a board certified law enforcement academy or at the northwest Indiana law enforcement training center under section 15.2 of this chapter, the basic training requirements established by the board under this chapter.

(e) Before a law enforcement officer appointed after June 30, 1993, completes the basic training requirements, the law enforcement officer may exercise the police powers described in subsection (d) if the officer successfully completes the pre-basic course established in subsection (f). Successful completion of the pre-basic course authorizes

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a law enforcement officer to exercise the police powers described in subsection (d) for one (1) year after the date the law enforcement officer is appointed.

(f) The board shall adopt rules under IC 4-22-2 to establish a pre-basic course for the purpose of training:

- (1) law enforcement officers;
- (2) police reserve officers (as described in IC 36-8-3-20); and
- (3) conservation reserve officers (as described in IC 14-9-8-27);

regarding the subjects of arrest, search and seizure, use of force, and firearm qualification. The pre-basic course must be offered on a periodic basis throughout the year at regional sites statewide. The pre-basic course must consist of forty (40) hours of course work. The board may prepare a pre-basic course on videotape that must be used in conjunction with live instruction. The board shall provide the course material, the instructors, and the facilities at the regional sites throughout the state that are used for the pre-basic course. In addition, the board may certify pre-basic courses that may be conducted by other public or private training entities, including colleges and universities.

(g) The board shall adopt rules under IC 4-22-2 to establish a mandatory inservice training program for police officers. After June 30, 1993, a law enforcement officer who has satisfactorily completed the basic training and has been appointed to a law enforcement department or agency on either a full-time or part-time basis is not eligible for continued employment unless the officer satisfactorily completes a minimum of sixteen (16) hours each year of inservice training in any subject area included in the law enforcement academy's basic training course or other job related subjects that are approved by the board as determined by the law enforcement department's or agency's needs.

Inservice training must include training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the law enforcement training board. In addition, a certified academy staff may develop and make available inservice training programs on a regional or local basis. The board may approve courses offered by other public or private training entities, including colleges and universities, as necessary in order to ensure the availability of an adequate number of inservice training programs. The board may waive an officer's inservice training requirements if the board determines that the officer's reason for lacking the required amount of inservice training hours is due to any of the following:

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- (1) An emergency situation.
- (2) The unavailability of courses.
- (h) The board shall also adopt rules establishing a town marshal basic training program, subject to the following:
 - (1) The program must require fewer hours of instruction and class attendance and fewer courses of study than are required for the mandated basic training program.
 - (2) Certain parts of the course materials may be studied by a candidate at the candidate's home in order to fulfill requirements of the program.
 - (3) Law enforcement officers successfully completing the requirements of the program are eligible for appointment only in towns employing the town marshal system (IC 36-5-7) and having no more than one (1) marshal and two (2) deputies.
 - (4) The limitation imposed by subdivision (3) does not apply to an officer who has successfully completed the mandated basic training program.
 - (5) The time limitations imposed by subsections (b) and (c) for completing the training are also applicable to the town marshal basic training program.
- (i) The board shall adopt rules under IC 4-22-2 to establish a police chief executive training program. The program must include training in the following areas:
 - (1) Liability.
 - (2) Media relations.
 - (3) Accounting and administration.
 - (4) Discipline.
 - (5) Department policy making.
 - (6) Firearm policies.
 - (7) Department programs.
- (j) A police chief shall apply for admission to the police chief executive training program within two (2) months of the date the police chief initially takes office. A police chief must successfully complete the police chief executive training program within six (6) months of the date the police chief initially takes office. However, if space in the program is not available at a time that will allow the police chief to complete the program within six (6) months of the date the police chief initially takes office, the police chief must successfully complete the next available program that is offered to the police chief after the police chief initially takes office.
- (k) A police chief who fails to comply with subsection (j) may not

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serve as the police chief until the police chief has completed the police chief executive training program. For the purposes of this subsection and subsection (j), "police chief" refers to:

- (1) the police chief of any city; and
- (2) the police chief of any town having a metropolitan police department.

A town marshal is not considered to be a police chief for these purposes, but a town marshal may enroll in the police chief executive training program.

(l) An investigator in the arson division of the office of the state fire marshal appointed:

- (1) before January 1, 1994, is not required; or
- (2) after December 31, 1993, is required;

to comply with the basic training standards established under this section.

(m) The board shall adopt rules under IC 4-22-2 to establish a program to certify handgun safety courses, including courses offered in the private sector, that meet standards approved by the board for training probation officers in handgun safety as required by IC 11-13-1-3.5(3).

SECTION 41. IC 11-8-2-8, AS AMENDED BY P.L.25-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) All officers and employees of the department, with the exception of the members of the board, members of the parole board, the commissioner, any deputy commissioner, and any superintendent, are within the scope of IC 4-15-2.

(b) IC 11-10-5 applies to teachers employed under that chapter, notwithstanding IC 4-15-2.

(c) The department shall cooperate with the state personnel department in establishing minimum qualification standards for employees of the department and in establishing a system of personnel recruitment, selection, employment, and distribution.

(d) The department shall conduct training programs designed to equip employees for duty in its facilities and programs and raise their level of performance. Training programs conducted by the department need not be limited to inservice training. They may include preemployment training, internship programs, and scholarship programs in cooperation with appropriate agencies. When funds are appropriated, the department may provide educational stipends or tuition reimbursement in such amounts and under such conditions as may be determined by the department and the personnel division.

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(e) The department shall conduct a training program on cultural diversity awareness that must be a required course for each employee of the department who has contact with incarcerated persons.

(f) The department shall provide six (6) hours of training to employees who interact with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities concerning the interaction, to be taught by persons approved by the secretary of family and social services, using teaching methods approved by the secretary of family and social services and the commissioner. The commissioner or the commissioner's designee may credit hours of substantially similar training received by an employee toward the required six (6) hours of training.

(g) The department shall establish a correctional officer training program with a curriculum, and administration by agencies, to be determined by the commissioner. A certificate of completion shall be issued to any person satisfactorily completing the training program. A certificate may also be issued to any person who has received training in another jurisdiction if the commissioner determines that the training was at least equivalent to the training program maintained under this subsection.

SECTION 42. IC 11-12-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. **(a)** For the purpose of encouraging counties to develop a coordinated local corrections-criminal justice system and providing effective alternatives to imprisonment at the state level, the commissioner shall, out of funds appropriated for such purposes, make grants to counties for the establishment and operation of community corrections programs. Appropriations intended for this purpose may not be used by the department for any other purpose. Money appropriated to the department of correction for the purpose of making grants under this chapter, and charges made against a county under section 9, do not revert to the state general fund at the close of any fiscal year, but remain available to the department of correction for its use in making grants under this chapter.

(b) The commissioner shall give priority in issuing community corrections grants to programs that provide alternative sentencing projects for persons with mental illness, addictive disorders, mental retardation, and developmental disabilities.

SECTION 43. IC 11-12-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) As used in this section, "jail officer" means a person whose duties include the daily or

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ongoing supervision of county jail inmates.

(b) A person may be confined in the county jail only if there is a jail officer stationed in the jail.

(c) A jail officer whose employment begins after December 31, 1985, shall complete the training required by this section during the first year of employment. This subsection does not apply to a jail officer who:

- (1) has successfully completed minimum basic training requirements (other than training completed under IC 5-2-1-9(h)) for law enforcement officers established by the law enforcement training board; or
- (2) is a law enforcement officer and is exempt from the training requirements of IC 5-2-1. For purposes of this subdivision, completion of the training requirements of IC 5-2-1-9(h) does not exempt an officer from the minimum basic training requirements of IC 5-2-1.

(d) The law enforcement training board shall develop a forty (40) hour program for the specialized training of jail officers. **The program training must include six (6) hours of training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities, to be provided by persons approved by the secretary of family and social services and the law enforcement training board.** The remainder of the training shall be provided by the board.

(e) The board shall certify each person who successfully completes such a training program.

(f) The department shall pay the cost of training each jail officer.

SECTION 44. IC 11-13-1-8, AS AMENDED BY SEA 263-2004, SECTION 82, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. (a) As used in this section, "board" refers to the board of directors of the judicial conference of Indiana established by ~~IC 33-33-9-3.~~ **IC 33-38-9-3.**

(b) The board shall adopt rules consistent with this chapter, prescribing minimum standards concerning:

- (1) educational and occupational qualifications for employment as a probation officer;
- (2) compensation of probation officers;
- (3) protection of probation records and disclosure of information contained in those records; and
- (4) presentence investigation reports.

(c) The conference shall prepare a written examination to be used

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in establishing lists of persons eligible for appointment as probation officers. The conference shall prescribe the qualifications for entrance to the examination and establish a minimum passing score and rules for the administration of the examination after obtaining recommendations on these matters from the probation standards and practices advisory committee. The examination must be offered at least once every other month.

(d) The conference shall, by its rules, establish an effective date for the minimum standards and written examination for probation officers.

(e) The conference shall provide probation departments with training and technical assistance for:

- (1) the implementation and management of probation case classification; and
- (2) the development and use of workload information.

The staff of the Indiana judicial center may include a probation case management coordinator and probation case management assistant.

(f) The conference shall, in cooperation with the division of family and children and the department of education, provide probation departments with training and technical assistance relating to special education services and programs that may be available for delinquent children or children in need of services. The subjects addressed by the training and technical assistance must include the following:

- (1) Eligibility standards.
- (2) Testing requirements and procedures.
- (3) Procedures and requirements for placement in programs provided by school corporations or special education cooperatives under IC 20-1-6.
- (4) Procedures and requirements for placement in residential special education institutions or facilities under IC 20-1-6-19 and ~~511 IAC 7-12-5~~ **511 IAC 7-27-12**.
- (5) Development and implementation of individual education programs for eligible children in:
 - (A) accordance with applicable requirements of state and federal laws and rules; and
 - (B) in coordination with:
 - (i) individual case plans; and
 - (ii) informal adjustment programs or dispositional decrees entered by courts having juvenile jurisdiction under IC 31-34 and IC 31-37.
- (6) Sources of federal, state, and local funding that is or may be available to support special education programs for children for

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whom proceedings have been initiated under IC 31-34 and IC 31-37.

Training for probation departments may be provided jointly with training provided to child welfare caseworkers relating to the same subject matter.

(g) The conference shall, in cooperation with the division of mental health and addiction (IC 12-21) and the division of disability, aging, and rehabilitative services (IC 12-9-1), provide probation departments with training and technical assistance concerning mental illness, addictive disorders, mental retardation, and developmental disabilities.

(h) The conference shall make recommendations to courts and probation departments concerning:

- (1) selection, training, distribution, and removal of probation officers;**
- (2) methods and procedure for the administration of probation, including investigation, supervision, workloads, record keeping, and reporting; and**
- (3) use of citizen volunteers and public and private agencies.**

(i) The conference may delegate any of the functions described in this section to the advisory committee or the Indiana judicial center.

SECTION 45. [EFFECTIVE JULY 1, 2004] (a) IC 5-2-1-9, IC 11-8-2-8, and IC 11-12-4-4, all as amended by this act, do not require a training program for interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities until January 1, 2005.

(b) This SECTION expires January 1, 2005.

SECTION 46. [EFFECTIVE JULY 1, 2004] (a) IC 11-12-2-1, as amended by this act, does not apply to the issuing of community corrections grants that provide alternative sentencing projects for persons with mental illness, addictive disorders, mental retardation, and developmental disabilities by the commissioner of the department of correction until January 1, 2005.

(b) This SECTION expires January 1, 2005.

SECTION 47. [EFFECTIVE JULY 1, 2004] (a) IC 11-13-1-8, as amended by this act, does not require the judicial conference of Indiana, the division of mental health, and the division of disability, aging, and rehabilitative services to provide probation departments with training and technical assistance concerning mental illness, addictive disorders, mental retardation, and developmental disabilities until January 1, 2005.

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(b) This SECTION expires January 1, 2005.

SECTION 48. IC 9-30-5-15, AS AMENDED BY P.L.32-2000, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least five (5) days; or

(B) the person to perform at least ~~thirty (30) days~~ **one hundred eighty (180) hours** of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has one (1) previous conviction of operating while intoxicated.

(b) In addition to any criminal penalty imposed for an offense under this chapter, the court shall:

(1) order:

(A) that the person be imprisoned for at least ten (10) days; or

(B) the person to perform at least ~~sixty (60) days~~ **three hundred sixty (360) hours** of community restitution or service; and

(2) order the person to receive an assessment of the person's degree of alcohol and drug abuse and, if appropriate, to successfully complete an alcohol or drug abuse treatment program, including an alcohol deterrent program if the person suffers from alcohol abuse;

if the person has at least two (2) previous convictions of operating while intoxicated.

(c) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, a sentence imposed under this section may not be suspended. The court may require that the person serve the term of imprisonment in an appropriate facility at whatever time or intervals (consecutive or intermittent) determined appropriate by the court. However:

(1) at least forty-eight (48) hours of the sentence must be served consecutively; and

(2) the entire sentence must be served within six (6) months after the date of sentencing.

(d) Notwithstanding IC 35-50-6, a person does not earn credit time

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while serving a sentence imposed under this section.

SECTION 49. IC 20-10.1-22.4-3, AS AMENDED BY P.L.2-2003, SECTION 59, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) As used in this section, "juvenile justice agency" has the meaning set forth in IC 10-13-4-5.

(b) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent, guardian, or custodian, under the following conditions:

- (1) The disclosure or reporting of education records is to a state or local juvenile justice agency.
- (2) The disclosure or reporting relates to the ability of the juvenile justice system to serve, before adjudication, the student whose records are being released.
- (3) The juvenile justice agency receiving the information certifies, in writing, to the entity providing the information that the agency or individual receiving the information has agreed not to disclose it to a third party, other than another juvenile justice agency, without the consent of the child's parent, guardian, or custodian.

(c) For purposes of subsection (b)(2), a disclosure or reporting of education records concerning a child who has been adjudicated as a delinquent child shall be treated as related to the ability of the juvenile justice system to serve the child before adjudication if the juvenile justice agency seeking the information provides sufficient information to enable the keeper of the education records to determine that the juvenile justice agency seeks the information in order to identify and intervene with the child as a juvenile at risk of delinquency rather than to obtain information solely related to supervision of the child as an adjudicated delinquent child.

(d) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply that:

- (1) discloses or reports on the education records of a child, including personally identifiable information contained in the education records, in violation of this section; and**
 - (2) makes a good faith effort to comply with this section;**
- is immune from civil liability.**

SECTION 50. IC 31-9-2-113.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 113.5. "School", for purposes of
IC 31-39-2-13.8, means a:

- (1) public school (including a charter school as defined in
IC 20-5.5-1-4); or
- (2) non-public school (as defined in IC 20-10.1-1-3);

that must comply with the education records privacy provisions of
the Family Educational Rights and Privacy Act (20 U.S.C. 1232g)
to be eligible to receive designated federal education funding.

SECTION 51. IC 31-39-2-13.8 IS ADDED TO THE INDIANA
CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2004]: Sec. 13.8. (a) The juvenile court may
grant a school access to all or a portion of the juvenile court
records of a child who is a student at the school if:

- (1) the superintendent, or the superintendent's designee;
- (2) the chief administrative officer of a nonpublic school, or
the chief administrative officer's designee; or
- (3) the individual with administrative control within a charter
school, or the individual's designee;

submits a written request that meets the requirements of
subsection (b).

(b) A written request must establish that the juvenile court
records described in subsection (a) are necessary for the school to:

- (1) serve the educational needs of the child whose records are
being released; or
- (2) protect the safety or health of a student, an employee, or
a volunteer at the school.

(c) A juvenile court that releases juvenile court records under
this section shall provide notice to the child and to the child's
parent, guardian, or custodian that the child's juvenile records
have been disclosed to the school.

(d) A juvenile court that releases juvenile court records under
this section shall issue an order requiring the school to keep the
juvenile court records confidential. A confidentiality order issued
under this subsection does not prohibit a school that receives
juvenile court records from forwarding the juvenile records to:

- (1) another school; or
- (2) a person if a parent, guardian, or custodian of the child
consents to the release of the juvenile court records to the
person.

A school or a person that receives juvenile court records under this

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subsection must keep the juvenile court records confidential.

SECTION 52. IC 34-30-2-85.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 85.5. IC 20-10.1-22.4-3 (Concerning the disclosure or reporting of education records of a child).**

SECTION 53. IC 35-42-2-6, AS AMENDED BY P.L.88-2002, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 6. (a) As used in this section, "corrections officer" includes a person employed by:

- (1) the department of correction;
- (2) a law enforcement agency; ~~or~~
- (3) a county jail; **or**

(4) a circuit, superior, county, probate, city, or town court.

(b) As used in this section, "human immunodeficiency virus (HIV)" includes acquired immune deficiency syndrome (AIDS) and AIDS related complex.

(c) A person who knowingly or intentionally in a rude, insolent, or angry manner places blood or another body fluid or waste on a law enforcement officer or a corrections officer identified as such and while engaged in the performance of official duties or coerces another person to place blood or another body fluid or waste on the law enforcement officer or corrections officer commits battery by body waste, a Class D felony. However, the offense is:

- (1) a Class C felony if the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with:
 - (A) hepatitis B;
 - (B) HIV; or
 - (C) tuberculosis;
- (2) a Class B felony if:
 - (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
 - (B) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and
- (3) a Class A felony if:
 - (A) the person knew or recklessly failed to know that the blood, bodily fluid, or waste was infected with HIV; and

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(B) the offense results in the transmission of HIV to the other person.

(d) A person who knowingly or intentionally in a rude, an insolent, or an angry manner places human blood, semen, urine, or fecal waste on another person commits battery by body waste, a Class A misdemeanor. However, the offense is:

(1) a Class D felony if the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with:

- (A) hepatitis B;
- (B) HIV; or
- (C) tuberculosis;

(2) a Class C felony if:

- (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with hepatitis B and the offense results in the transmission of hepatitis B to the other person; or
- (B) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with tuberculosis and the offense results in the transmission of tuberculosis to the other person; and

(3) a Class B felony if:

- (A) the person knew or recklessly failed to know that the blood, semen, urine, or fecal waste was infected with HIV; and
- (B) the offense results in the transmission of HIV to the other person.

SECTION 54. IC 35-50-5-3, AS AMENDED BY P.L.88-2002, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Except as provided in subsection (i), in addition to any sentence imposed under this article for a felony or misdemeanor, the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime, the victim's estate, or the family of a victim who is deceased. The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime

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has caused the victim to contract a disease or other medical condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

(b) A restitution order under subsection (a) or (i) is a judgment lien that:

(1) attaches to the property of the person subject to the order;

(2) may be perfected;

(3) may be enforced to satisfy any payment that is delinquent under the restitution order by the person in whose favor the order is issued or the person's assignee; and

(4) expires;

in the same manner as a judgment lien created in a civil proceeding.

(c) When a restitution order is issued under subsection (a), the issuing court may order the person to pay the restitution, or part of the restitution, directly to:

(1) the victim services division of the Indiana criminal justice institute in an amount not exceeding:

(1) (A) the amount of the award, if any, paid to the victim under IC 5-2-6.1; and

(2) (B) the cost of the reimbursements, if any, for emergency services provided to the victim under IC 16-10-1.5 (before its repeal) or IC 16-21-8; or

(2) a probation department that shall forward restitution or part of restitution to:

(A) a victim of a crime;

(B) a victim's estate; or

(C) the family of a victim who is deceased.

The victim services division of the Indiana criminal justice institute shall deposit the restitution ~~received~~ it receives under this subsection in the violent crime victims compensation fund established by IC 5-2-6.1-40.

(d) When a restitution order is issued under subsection (a) or (i), the issuing court shall send a certified copy of the order to the clerk of the circuit court in the county where the felony or misdemeanor charge was filed. The restitution order must include the following information:

(1) The name and address of the person that is to receive the

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restitution.

(2) The amount of restitution the person is to receive.

Upon receiving the order, the clerk shall enter and index the order in the circuit court judgment docket in the manner prescribed by IC 33-17-2-3. The clerk shall also notify the department of insurance of an order of restitution under subsection (i).

(e) An order of restitution under subsection (a) or (i) does not bar a civil action for:

(1) damages that the court did not require the person to pay to the victim under the restitution order but arise from an injury or property damage that is the basis of restitution ordered by the court; and

(2) other damages suffered by the victim.

(f) Regardless of whether restitution is required under subsection (a) as a condition of probation or other sentence, the restitution order is not discharged by the completion of any probationary period or other sentence imposed for a felony or misdemeanor.

(g) A restitution order under subsection (a) or (i) is not discharged by the liquidation of a person's estate by a receiver under IC 32-30-5 (or IC 34-48-1, IC 34-48-4, IC 34-48-5, IC 34-48-6, IC 34-1-12, or IC 34-2-7 before their repeal).

(h) The attorney general may pursue restitution ordered by the court under subsections (a) and (c) on behalf of the victim services division of the Indiana criminal justice institute established under IC 5-2-6-8.

(i) The court may order the person convicted of an offense under IC 35-43-9 to make restitution to the victim of the crime. The court shall base its restitution order upon a consideration of the amount of money that the convicted person converted, misappropriated, or received, or for which the convicted person conspired. The restitution order issued for a violation of IC 35-43-9 must comply with subsections (b), (d), (e), and (g), and is not discharged by the completion of any probationary period or other sentence imposed for a violation of IC 35-43-9.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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